

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Joseph Constant,

Plaintiff,

v.

Case No. 15-11926

Ms. Shalina D Kumar (P56595),

Honorable Sean F. Cox

Defendant.

ORDER DENYING
PLAINTIFF'S "MOTION TO APPEND" (DOCKET ENTRY NO. 15)

Acting *pro se*, Joseph Constant ("Plaintiff") filed this action against a single Defendant, Shalina Kumar. The Complaint indicates that Defendant Shalina Kumar is the state court judge who presided over a civil action to which Plaintiff was a party.

In an Order issued on June 8, 2015, this Court granted Plaintiff's application to proceed *in forma pauperis*. This Court also ordered Plaintiff "TO SHOW CAUSE, in writing, no later than June 16, 2015, why his claims against Judge Kumar should not be dismissed based upon judicial immunity." (*Id.*).

Plaintiff did not seek to file an amended complaint after receiving the Court's Show Cause Order.

On June 16, 2015, Plaintiff filed a motion requesting an extension, until June 23, 2015, to respond to this Court's Show Cause Order. (Docket Entry No. 8). This Court granted that extension and Plaintiff responded to the Court's Show Cause Order.

In an Order issued on July 15, 2015, this Court dismissed this action, concluding that Defendant is Kumar is entitled to judicial immunity. (Docket Entry No. 12). Plaintiff did not

file a motion for reconsideration with this Court.

On July 24, 2015, Plaintiff filed a Notice of Appeal. (Docket Entry No. 13). Plaintiff's appeal in the United States Court of Appeals for the Sixth Circuit is currently pending.

In connection with his appeal, Plaintiff apparently filed a motion seeking to append the arguments sections of his complaint. According to a document provided by Plaintiff, the Sixth Circuit responded to that filing by sending him a letter stating:

We are returning "unfiled" your motion to append to the arguments section of original complaint. This court cannot rule on this motion. Your motion must be filed in the District Court for a ruling.

(Docket Entry No. 15 at Pg ID 1931). Plaintiff – as instructed – then filed that letter with this Court, along with a copy of a "Motion To Append To The Arguments Section Of My Original Complaint In The U.S. District Court Case 2:10-15-CV-11926, Joseph Constant v. State of Michigan Judge Shalina Kumar (P56595)."

This Court has reviewed Plaintiff's motion. This Court is not aware of any authority that allows this Court to allow Plaintiff to amend his complaint *after* the Court had dismissed Plaintiff's Complaint and closed this case and *after* he has filed a direct appeal challenging this Court's ruling.

Moreover, even if this Court has such authority, the Court would not grant Plaintiff's motion. Plaintiff's submission contains only two references to Defendant Kumar (Pg ID 1933, second paragraph, and Pg ID 1934, first paragraph). Those paragraphs simply allege that Judge Kumar, in connection with a civil action pending before her, agreed with the arguments advanced by DTE in the litigation. Accordingly, even if Plaintiff were allowed to amend his complaint to include such allegations, this Court would still conclude that none of the actions allegedly taken by Judge Kumar fall outside of the scope of judicial immunity.

Accordingly, the Court hereby **DENIES** Plaintiff's motion.

IT IS SO ORDERED.

S/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: February 8, 2016

I hereby certify that a copy of the foregoing document was served upon Joseph Constant on February 8, 2016, by electronic and/or ordinary mail.

S/J. McCoy

Case Manager